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2016 Constitution Day Essay Contest: Honorable Mention

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Constitution Day, created in 2004 by an act of Congress, mandates that all publicly funded schools provide educational programming on the history of the U.S. Constitution, which was adopted by delegates to the Constitutional Convention on Sept. 17, 1787. This year's Constitution Day at UK is Monday, September 19th (see <http://www.uky.edu/UGE/constitution-day-2016>). Under direction from the Office of the President and the Provost, the Division of Student and Academic Life will lead a cross-campus gathering of support for offering Constitution Day activities at the University of Kentucky. Staff and faculty work with many different student organizations and units on campus to develop a campus-wide approach to the celebration of our rights and responsibilities as citizens of the U.S. and to develop habits of citizenship in a new generation of Americans. The general thematic topic this year is focusing on "Freedom of Expression, Identity and the U.S. Constitution."

An essay contest for undergraduates is sponsored by the UK Scripps Howard First Amendment Center, the Office of the President and the Provost's Division of Student and Academic Life. The essays are blind-judged by former UK journalism students who are lawyers, UK professors and media law professors at other universities. The entries are scored on the following criteria: historical and legal accuracy of the content, the strength and logic of the argument, the original ideas presented, the organization of the argument, including the thesis, and the quality of the writing. The winners are announced the First Amendment Celebration, 7:00 p.m. Tuesday, Sept. 27, in the Kincaid Auditorium of the Gatton College of Business and Economics.

The essay, which cannot exceed 750 words, addressed this writing prompt:

During the Republican National Convention in Cleveland in July, protesters tried to burn a flag of the United States. Although such an act offends many people, the Supreme Court ruled in 1898 and again in 1990 that burning the flag is expressive conduct – an act of speech – and protected by the First Amendment. In another First Amendment decision, the Supreme Court ruled unconstitutional the attempt by Congress to regulate the spending of money during political campaigns. In the *Citizens United* decision in 2010, the majority said campaign contributions are also protected speech. That means businesses, unions, and organized groups can spend as much money as they choose for ads supporting or opposing candidates as long as they don't coordinate such spending with the candidates' campaigns.

Essays must address this question: Should Congress propose an amendment to the Constitution that would allow the federal government and states to make it a crime to burn the United States flag and another amendment to allow legislatures to place limits on the amount of money flowing into political campaigns?

Michael Morris – Honorable Mention

[No Title]

There's a duality among constitutional scholars when asked how to define speech in the context of the First Amendment. However, based on contentious Supreme Court decisions, the right to burn an American flag and unlimited campaign contributions are legal uses of the First Amendment. Making either of these changes to the Constitution would alter the nature of free speech in this country drastically and threaten all forms of nonverbal communication as it exists under federal statute.

Currently free speech is limited in numerous ways due to Supreme Court decisions. *Miller v. California* prohibits obscenities from television and radio. *Schenck v. United States* led to the famous quote in the majority opinion that states that, "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre...". Many Supreme Court decisions have limited the free speech of students by considering whether or not their behavior was disruptive. These are all instances of when free speech, both verbal and nonverbal, was limited through constitutional interpretation. There is a linearity present in which free speech becomes limited in one way that leads to court to interpret a new form of speech as being categorically similar to that which was already outlawed. For example, the Miller test of *Miller v. California* is based off prior decisions, *Memoirs v. Massachusetts* and *Roth v. United States*, and it expands upon the definition of obscenity. While I am not arguing that these decisions are not for the common good, it is an ever present risk that outlawing controversial uses of free speech can lead to a very limiting definition of speech altogether.

Flag burning and excessive campaign spending are both controversial uses of speech. Flag burning is controversial because the message is offensive to many people. However, the Constitution must protect even offensive speech if it is truly going to be a free society. Otherwise, we would live in the environment where socialist presidential candidates like Eugene v. Debs of the early 20th century could be placed in jail for anti-war sentiments. This is not much different from flag burning because it is meant to be a symbol that contradicts government behavior. Contrarian expression can be a medium of positive social change even when its demonstration lacks social decency and at times appears almost anarchistic.

What makes the *Citizens United* decision controversial also relates to the definition of free speech. It makes the assertion that money can be used as speech and that money can be given through many people under the name of any kind of collective group. This includes interest groups and other associations, but most importantly, political action committees. The connotation given to these groups does not accurately depict their role in the political process. Many people seem to believe that political action committees exist in some kind of vacuum in which they feed off the toil of the American people to raise money for the political elite. However, this is not true. The money that is given to these groups are conscientiously given by a variety of associations to support whom donors believe to be favorable political candidates. While the method of fundraising is questionable, people can allow the methods of fundraising to influence the way that they vote. However, limiting the right of associations to donate to political campaigns can ultimately affect the way money is treated by the federal government under the

First Amendment. Money is a form of speech and often a very effective form of speech in not only the political process, but in processes far beyond reasonable federal intervention.

It is clear that prior Supreme Court decisions have drastically affected the definition of free speech over time. Furthermore, a constitutional amendment is not much different than a Supreme Court decision because the Constitution only exists as its most current interpretation. An amendment is only a more explicit change. A change to limit flag burning and campaign contributions could easily lead to reinterpretations that began to abandon all forms of nonverbal communication. Moreover, there are positive outcomes that can arise from the mediums of speech that would never come to fruition under laws that forbade these controversial rights.

